

**United States Postal Service and American Postal Workers Union Local 4560, AFL-CIO. Cases 11-CA-13798(P) and 11-CA-13867(P)**

February 28, 1992

**ORDER DENYING MOTION**

BY MEMBERS DEVANEY, OVIATT, AND  
RAUDABAUGH

On July 13, 1990, the Regional Director for Region 11 of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act. The Respondent filed an answer, admitting in part and denying in part allegations of the complaint, pleading certain affirmative defenses, and requesting that the complaint be dismissed.

On October 9, 1990, the Respondent filed with the Board a motion to dismiss or to defer and a supporting memorandum. The Respondent contended that the complaint should be dismissed, or, alternatively, deferred to the grievance-arbitration procedure in accordance with *Dubo Mfg. Corp.*, 142 NLRB 431 (1963). On May 13, 1991, the Board denied Respondent's October 9, 1990 motion.<sup>1</sup> The Board found that there are material issues of fact in dispute pertaining to both unfair labor practice allegations of the complaint. The Board also declined to defer resolution of these allegations to arbitration.

On November 27, 1991, the Respondent filed the instant Motion to Dismiss or to Defer. The Respondent renews the contention raised in its October 9, 1990 motion that the complaint should be dismissed. The Respondent further contends that the Board should defer to a subsequent March 4, 1991 arbitrator's deci-

sion which, according to the Respondent, resolves the unfair labor practice allegations set forth above, each of which the Board found inappropriate for deferral in its May 13, 1991 Order. The Respondent again argues that the allegations are suitable for deferral under *Dubo Mfg. Corp.*, 142 NLRB 431 (1963), and now also asserts that the subsequent arbitrator's award comports with the standards set forth in *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955), for postarbitration deferral. The General Counsel filed a response to the Respondent's second motion.

On December 20, 1991, the National Labor Relations Board issued a Notice to Show Cause why the Respondent's November 27, 1991 motion should not be granted. The General Counsel, the Charging Party, and the Respondent each filed responses.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board denies the Respondent's motion to dismiss the allegations of the complaint as raising no matter not previously considered. As to the Respondent's renewed request for deferral to arbitration, the Board held in the May 13, 1991 Order that the unfair labor practice allegations "are not subject to deferral."<sup>2</sup> Accordingly, the Board denies the motion to defer for reasons stated in that decision. Because the complaint allegations are not deferrable, the Board finds it inappropriate to apply the *Spielberg* postarbitration standards to this case, as the Respondent urges.

IT IS ORDERED that the Respondent's motion to dismiss or to defer is denied.

IT IS FURTHER ORDERED that the proceeding is remanded to the Regional Director for Region 11 for further appropriate action.

<sup>1</sup> 302 NLRB 918 (1991).

<sup>2</sup> Ibid.